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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,612

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Gunter Richter

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FRIEDRICH KUEFFNER
317 MADISON AVENUE, SUITE 910
NEW YORK, NY 10017

EXAMINER

GROSSO, HARRY A

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

09/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/527,612	Applicant(s) RICHTER, GUNTER	
	Examiner HARRY A. GROSSO	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 4-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,8,9 and 11-15 is/are rejected.
- 7) ☒ Claim(s) 2 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 8, 2009 has been entered.

Claim Objections

Claim 10, as presented in the filing of July 27, 2009, is shown as "currently amended", however, the amendment indicated in the claim was entered as part of the amendment filed 12/22/08. The claim status should be "previously presented" with the previous amendment incorporated into the claim.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 8, 9, 11, 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Mojonnier (3,176,879).
3. Regarding claim 1, Mojonnier discloses a plastic container consisting of two container parts (21, 22 Figures 1-10) with each part having an upper floor (32a, 32b,

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Figure 1) a connection opening and a connection frame and the connection frames have vertical support devices (36a, 36b, 35) in the connection frame. The container parts are capable of being used in the ground and the support devices are capable of withstanding vertical forces from the ground to some degree.

4. Regarding claim 3, Mojonnier discloses the containers have substantially identical structure except for a filling neck (51).

5. Regarding claim 8, Mojonnier discloses the support device includes a wall (36a, 36b).

6. Regarding claim 9, Mojonnier discloses the wall comprises ribs (35) that are vertically extending in that the ribs have a vertical component.

7. Regarding claim 11, Mojonnier discloses the width of each container part is smaller than double the diameter of the respective connection frames, as best understood.

8. Regarding claim 13, Mojonnier discloses the container structure. The examiner considers the phrase "for manufacturing the container parts and, if necessary, a mold insert for creating a change in shape is inserted into the same blowing mold" to constitute a product by process limitation that does not materially affect structure.

9. Regarding claim 15, Mojonnier discloses the container has a square base.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mojonnier. Mojonnier discloses the invention except for the capacity being 4000 to 6000 liters. It would have been an obvious matter of design choice to make the container of Mojonnier with a capacity of 4000 to 6000 liters, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mojonnier in view of Yano et al (5,073,420) (Yano). Mojonnier discloses the container made from polyethylene (column 2, lines 24-27) but does not teach the use of high-molecular high-density polyethylene, as best understood. Yano discloses a similar container and use of high-density polyethylene for the container (column 2, lines 50-52 and column 3, lines 14-16). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of high-molecular high-density polyethylene as disclosed by Yano in the container disclosed by Mojonnier because it is known in the art to utilize high-molecular high-density polyethylene for such containers and the process would be readily known.

Allowable Subject Matter

13. Claims 2 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

14. Applicant's arguments filed July 27, 2009 have been fully considered but they are not persuasive. Applicant argues that the principal component of the container according to the instant invention is the support device that is arranged in the connection frame and is located within the container as shown in the figures of the instant application. Applicant argues the support devices cited by the Examiner in the Mojonnier reference are on the outer side of the container and outside the connection frames and do not extend within the interior of the container. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the support device that is located within the container) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claim 1 recites the limitation of a support device which extends in the connection frame in the vertical direction. Mojonnier has connection frames where the two container parts are joined at the openings. Mojonnier has support devices (35, 36a, 36b) that extend vertically. The supports extend in the connection frame in that they are a part of the connection frame, and are formed on the inner edge of the connection extending vertically.

Conclusion

15. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the

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grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **HARRY A. GROSSO** whose telephone number is (571)272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Harry A. Grosso
/Harry A. Grosso/
Examiner, Art Unit 3781

hag